UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555(JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

December 6, 2011

10:00 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

MATTER: Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Be seated. It must be a big day; we have a big crowd.

MR. MILLER: Sorry, sir?

THE COURT: I said it must be a big day. We have a big crowd.

MR. MILLER: Nobody's standing, Your Honor.

THE COURT: That's a good -- well, actually, somebody may be standing over there.

MR. MILLER: Good morning, Your Honor.

THE COURT: Good morning.

MR. MILLER: Harvey Miller, Weil Gotshal & Manges, on behalf of the debtors with Lori R. Fife, my partner. Your Honor, this is a hearing pursuant to Section 1128 of the Bankruptcy Code to consider confirmation of the debtors' modified third amended joint plan dated December 5, 2011, Your Honor, which we filed last evening which is ECF number 22931.

Just in support of this hearing, Your Honor, the debtors have filed the declaration of John K. Suckow in support of confirmation, ECF number 22759, dated November 29, 2011; the declaration of Daniel J. Ehrmann in support of confirmation, ECF number 22760, dated November 29, 2011; the declaration of Steven J. Cohn in support of confirmation, ECF number 22761, dated November 29, 2011; the declaration of Jane Sullivan on behalf of Epiq Bankruptcy Solutions LLC regarding voting and

tabulation of ballots cast on the debtors' third amended joint plan, ECF number 22743, dated November 29, 2011; supplemented declaration of Jane Sullivan on behalf of Epiq Bankruptcy Solutions LLC regarding voting and tabulation of ballots cast on debtors' third amended joint plan, ECF number 22972, dated December 5, 2011; and the debtors' response to objections that were interposed to confirmation, ECF number 22751, dated November 29, 2011; plan supplements, amendments 1 through 7, Your Honor, under ECF number 21254; a proposed order of confirmation; and, in addition to that, Your Honor, the debtors' statement as to post-effective date directors of LBHI, ECF number 22931, dated December 5, 2011. In addition, Your Honor, the debtors have filed two memoranda of law.

I was just thinking, Your Honor, that it seems almost like yesterday that we started this journey. And in another context, to some of us, it seems we have spent a lifetime working on Lehman, particularly when you look at the time records of some of the attorneys. It seems, Your Honor, we must have done something right given the overwhelming acceptance of the Chapter 11 plan. But nevertheless, Your Honor, in my own mind, I look back to that fateful endless day of September 14, 2008 that morphed into the day, the filing of the Chapter 11 petition, the first Chapter 11 petition, by Lehman Brothers Holdings Inc. That was soon followed by sequential Chapter 11 petitions by subsidiaries and affiliates

of LBHI.

I also see the chaos, the confusion and the distress on the faces of hundreds of Lehman employees flooding into the enterprises headquarters at 745 Seventh Avenue in their attempt to gather their personal belongings before a potential lockdown of the building and the beginning of the electronic filing of the Chapter 11 petition.

And finally, the anxieties and apprehensions expressed as to what is next. The challenges were daunting. It was extremely unlikely that anyone present at that time or even outside of that building thought that the chaos would soon be relieved or that in slightly over three years, we would be standing here today to consider the confirmation of the joint Chapter 11 plan for the twenty-three Chapter 11 debtors.

It has been through the dedication, diligence and 24.7 obstinance of the debtors, their professionals, the unsecured creditors' committee, and subsequently by other parties in interest and, most importantly, the provisions of the Bankruptcy Code that order evolved out of chaos. The full magnitude of the issues that would emerge as a consequence of the ill-conceived decision to sink the Lehman enterprise and the collapse of the financial markets in those crisis weeks following September 15, 2008 that had to be confronted was not within the knowledge of any of the parties in interest or, indeed, the government and the public at large. It was only

through the prism of these Chapter 11 cases that the full scope of the multi-faceted issues, conflicts, international relationships and ramifications came to the forefront. It was only with the tools provided by the Bankruptcy Code and, with due respect, the dedication exhibited by the Court and the courage that the Court exhibited in administering these cases that they have progressed to the point of confirmation. It was pursuant to the Court's early suggestion that immediate attention was focused on the international aspects of the failed Lehman enterprise and the need to initiate dialogue and resolution with foreign administrators, receivers and fiduciaries for the over eighty Lehman entities subject to foreign solvency proceedings in sixteen international jurisdictions that were critical to the resolution of these cases.

The formulation and adoption of the global close which served as the foundation and point of departure in realizing the amounts and substance of claims was as a result of that suggestion. And it has formed one of the foundation stones that enabled us to get to the point of confirmation.

The global protocol was an essential element in the resolution of major issues that otherwise might have impeded the consideration of the confirmation of the Chapter 11 plan for a very extended time. Credit must be given to the foreign administrators and fiduciaries and their professionals who

extended themselves to negotiate in good faith and at arm's length to reach accommodations that have helped to establish a basic underlying premise of these Chapter 11 cases, the avoidance of expensive protracted multi-jurisdictional litigation that would indefinitely postpone the distribution of dividends to holders of allowed claims against the Chapter 11 debtors.

It would be fair to say that these Chapter 11 cases present an unprecedented epic in the annals of financial disasters and the use of bankruptcy law to provide the framework for the protection of all global parties in interest and the disposition of critical issues as well as the administration of extraordinarily difficult and often opaque esoteric assets. The appointment of Anton Valukas as the examiner and his voluminous report of thousands of pages that was filed in February of 2010 dissipated a lot of the fog of war that surrounded the Chapter 11 cases.

The record of these cases is replete with what has been accomplished to date. Just to put it in the context, once again, as a succinct preamble to today's confirmation hearing, the debtors, with the overwhelming support of their economic stakeholders, request the confirmation of their joint Chapter 11 plan for the twenty-three debtors. Over 67,000 proofs of claim were initially filed against the debtors aggregating in total an approximate amount of 1.2 trillion dollars. As noted

in prior proceedings, as a result of over 200 omnibus motions objecting to filed claims, over 230,000 claims -- I'm sorry -- over 23,000 claims aggregating approximately 220 plus billion dollars have either been withdrawn, reduced, reclassified, disallowed or expunged. The claims resolution process continues each day. The global settlement, which is a material element of today's Chapter 11 plan, incorporated into the plan and the bilateral settlements will very significantly reduce the dollar amount of allowed claims by billions of dollars.

As the administration moved into 2010, the issues and the conflicts among parties in interest became more clearly defined, particularly, the overhanging issue of potential substantive consolidation of the debtors and their affiliates to create a single pool of assets and liabilities versus treating each debtor and their affiliates as separate independent legal entities that operated separate and distinct businesses. The contentions and conflicting presentations raged through most of 2010.

On March 15, 2010, as the statutory exclusive period for plan filing was about to expire, the debtors filed a proposed Chapter 11 plan that represented their initial and preliminary views and was intended to act as a placeholder. During the fall of 2010 and based upon the continuing investigation and administration of the debtors' assets, in a report to the Court as to the state of the estate, the debtors

indicated the more refined parameters for an amendment of their plan. Subsequent to that report, meetings and discussions were held with various parties in interest. An ad hoc group of LBHI creditors had been organized and, apparently in response to disagreements with the debtors' concept, on December 15, 2010, filed a competing proposed Chapter 11 plan and a related disclosure statement for a plan that contemplated substantive consolidation of essentially all of the debtors.

Under the ad hoc plan, the equitable doctrine of substantive consolidation was to be applied to all of the respective assets and liabilities with minor exceptions including certain of the debtors' foreign affiliates. They would be consolidated, eliminating guaranty and intercompany claims.

On January 25, 2011, the debtors filed their first amended joint Chapter 11 plan. The debtors' plan did not propose the substantive consolidation of the debtors and their affiliates but rather sought to achieve a reconciliation of the issues of substantive consolidation and related treatment of the relationships among the debtors and their affiliates through proposed mechanisms incorporated into the plan. Again, agreement was elusive and negotiations continued. Substantive consolidation became the leading dispute among the economic stakeholders and the debtors.

The situation deteriorated to the point that on April

25, 2011, a proposed joint Chapter 11 plan and a related disclosure statement was filed by twenty-three creditors who together, with certain of their affiliates, had been referred to as the non-con plan proponents or OpCo creditors.

The non-con plan took a diametrically opposite approach for the reorganization of the debtors. The non-con plan proposed a complete separation of the debtors based upon the individual legal entity of each debtor and declared a total denial of any risk of substantive consolidation for any of the debtors.

The gap between the parties, particularly the ad hoc group and the non-com plan proponents, appeared almost insurmountable. The debtors attempted to demonstrate the wisdom of their plan and continued to meet with representatives of different groups. In a major effort to prevent these Chapter 11 cases sinking into a morass of competing plans, substantial litigation and attendant costs and loss of time to the ultimate detriment of the economic stakeholders, in June of 2011, the debtors initiated intensive negotiations with all of the major stockholders. These intensive June negotiations successfully produced a consensus among many of the major economic stakeholders including the overwhelming majority of the foreign administrators, fiduciaries and receivers. The negotiations resulted in the debtors modifying their proposed Chapter 11 plan to accommodate the consensus agreed to, a

consensus that include the global settlement of the issues of substantive consolidation, recharacterization and the like that had divided the parties and had produced the three competing plans.

The global settlement, Your Honor, is the lynchpin of the debtors' plan. Consistent with the consensus reached among the major stakeholders and the debtors, the ad hoc group and non-con plan proponents agreed to suspend consideration of their alternative and competing plans pending the prosecution of the debtors' joint plan. The debtors' joint plan does not substantively consolidate any of the debtors or their affiliates but rather incorporates a series of interconnected concessions by stakeholders designed to expedite the administration and conclusion of these Chapter 11 cases. Based upon that consensus, the debtors quickly moved for the approval of their joint disclosure statement and related orders to implement the voting procedures and the prosecution of the confirmation of their plan.

The disclosure statement approval hearing was held before the Court on August 30, 2011. Over 110,000 notices of the hearing were transmitted to parties in interest. Numerous objections were raised to the proposed disclosure statement that were promptly addressed by the debtors and their professionals so that by the time of the hearing, the number of objections to the disclosure statement was de minimis. If I

recall correctly, the objections that remained outstanding as of the hearing date and heard by the Court was less than fifteen.

To use the Court's word, it was miraculous that the debtors and their professionals were able to muster the exhibited level of support given the nature, issues and contentions that had permeated the cases. The Court particularly noted that the debtors' plan had been able to obtain by July 1, 2011 plan support agreements executed by forty-seven major claimants asserting over one hundred billion dollars of claims against the Chapter 11 debtors.

After hearing the remaining objections and some modifications made by the debtors to the proposed disclosure statement and the debtors' plan, the Court approved the disclosure statement. And on September 1, 2011, the order of approval of the disclosure statement and the solicitation order were entered.

As the solicitation process proceeded, the debtors continued to consider the views of their economic stakeholders and proceeded to explore and make further refinements that would accommodate the comments and questions when appropriate. As noted by the submissions filed by the debtors in support of confirmation, the number of executed plan support agreements has now risen to more than 150 covering creditors asserting claims of over 450 billion/million dollars.

At this point, Your Honor, it's almost amazing to report that there is only one objection to confirmation remaining. Indeed, Your Honor, the one objection, which is noted in the agenda for today's hearing, there's even a change in that respect, Your Honor. In the agenda for today's hearing, the unresolved objection is referred to as the objection of China Development Industrial Bank and Dotson Investments. That objection, Your Honor, now is limited to Dotson Investments. The objection with respect to China Development Industrial Bank has been withdrawn.

So the objection that remains, Your Honor, is the objection of Dotson Investments Ltd. And there are two claims filed by Dotson Investments. And together, Your Honor, those two claims are less than a million dollars. And the claims that have been filed by Dotson are a claim in the amount of $653,141.31 against LBHI based upon a guaranty of bonds issued by Lehman Brothers UK Capital Funding LP and guaranties by Lehman Brothers PLC. That's claim number 47171.

And the other claim is a claim in the amount of $237,304.48 against LBHI based on a guaranty of the Lehman program securities issued by Lehman Brothers UK Capital Funding IV LP. That's claim number 47035.

As evidenced, Your Honor, by the declarations of Epiq Bankruptcy Solutions LLC, dated November 29, 2011, and the supplemental declaration, which is dated December 4, I believe,

Your Honor, the level of acceptance of the Chapter 11 plan is overwhelming. Over 75,000 creditors asserting a total of over 405 billion dollars in claims voted on the joint plan. Of those creditors who voted, in the aggregate, 71,553 creditors accepted the plan. In the aggregate, Your Honor, that number equals ninety-five percent of the number of creditors who actually voted on the plan. And those accepting creditors, in the aggregate, represent 98.68 percent in the amount of the creditor claims that were voted.

And in the supplemental declaration of Epiq Business Solutions LLC, Your Honor, it sets out as to each debtor, each of the twenty-three debtors, the votes as to that particular case.

Now, at this point in the proceedings, Your Honor, and anticipating a great more objections, we had planned to go into a detailed presentation of the provisions of the plan and then get to the objections and deal with the objections. Ms. Fife is prepared, Your Honor, to present the overview of the plan, the acceptance level if Your Honor desires.

THE COURT: Well, I read everything at the time that we had lots of objections. And it seemed that every time I read an objection, the objection was resolved. I'm certainly personally familiar with the background of the case, the circumstances that led to the development of the plan, the structure of the plan and issues that relate to the global

settlement and the bilateral settlements. However, it's your record.

MR. MILLER: Your Honor, I take Your Honor's comments seriously. Ms. Fife?

MS. FIFE: Good morning, Your Honor. Lori Fife from Weil Gotshal & Manges for the debtors. I'll try to keep this brief since Your Honor is familiar with the plan.

Generally, the plan is a joint plan but constitutes twenty-three separate plans, one for each of the Chapter 11 debtors. As Mr. Miller described, the plan does not substantively consolidate the twenty-three debtors. The allowed claims against each debtor will be satisfied primarily from the assets of that debtor.

The plan incorporates separate waterfall classification and distribution schemes for each of the debtors that strictly follow the statutory priorities under the Bankruptcy Code. The plan separately classifies priority nontax claims, secured claims, unsecured claims and equity interest.

As to the participating debtors, which are LBHI, LBSF, LCPI, LOTC, LBCS and LBCC, the plan also provides for administrative convenience classes. In total, the plan includes 161 classes of which 134 classes were entitled to vote on the plan. There are seventeen classes in LBHI, nine classes in LBSF and LCPI, eight classes in LBCS, LOTC and LBCC and six

classes in the other subsidiary debtors.

After satisfying or reserving in full for secured, administrative and priority claims and the payment of convenience claims, in accordance with the plan, each debtor will distribute its available cash to unsecured creditors on a pro rata basis. In some cases, the cash will be reallocated in accordance with the global settlement which I will describe.

The global settlement resolves various plan issues affecting the creditors and incorporates an integrated negotiated resolution.

What are the plan issues? The plan issues addressed by the global settlement include: whether the equitable doctrine of substantive consolidation may be applied to the debtors and their affiliates; the characterization of intercompany balances owed by LBHI to the subsidiary debtors -- by the subsidiary debtors -- sorry; the allowed amounts of affiliate claims; the ownership and rights of various debtors and their affiliates with respect to certain assets; the allocation of costs and expenses of administration among the debtors; and corporate governance of the post-effective date debtors.

In order to resolve the plan issues in January of 2011, the debtors proposed a settlement in their second amended plan. That plan introduced a structure and certain mechanisms to implement a global settlement that actually remain the heart

of the plan today. That plan separately classifies unsecured claims against the debtors based upon the nature of the claims. So claims asserted by an affiliate of the debtors are classified separately from claims of third parties. Guaranty claims against LBHI are separately classified from direct claims against LBHI. Senior and subordinated claims are separately classified in order to strictly comply with Section 510 of the Bankruptcy Code.

The treatment of these various unsecured claims is intended to take into account the risks of the plan issues that I just described. For example, guaranty claims and affiliate claims would be eliminated if substantive consolidation of the debtors and their affiliates was directed.

The resolution of the plan issues is implemented through various mechanics of the global settlement. The primary settlement mechanism in the plan is the plan adjustment provision. Specifically, guaranty claims asserted against LBHI by third parties reallocate twenty percent of their recoveries to account for the risk that such claims would be eliminated in the event of substantive consolidation.

This was a negotiated percentage among the debtors and the creditors' committee regarding the risk of substantive consolidation. Claims against the subsidiary debtors, which would receive lower recoveries as substantive consolidation was ordered, also are required to reallocate a percentage of their

recoveries to direct creditors of LBHI. Then the direct third party unsecured creditors of LBHI actually receive the reallocated funds or the plan adjustment, as we call it, as they would benefit in the event of substantive consolidation, essentially, because of the elimination of the dilution caused by the affiliate and guaranty claims against LBHI and the additional recoveries they would realize from the pooled assets of the consolidated entities.

The second settlement mechanism in the plan is the resolution and treatment of affiliate claims; in particular, guaranty claims asserted by affiliates against LBHI which were filed in enormous amounts. To take into account the risks to such claims including the debtors' challenges to the validity and enforceability of the guaranty claims of affiliates, as well as the substantive consolidation risk, the plan provides that affiliate claims against LBHI are to be allowed pursuant to settlement, if possible, or they must be litigated. The bilateral settlement agreements, many of which were subsequently entered into in connection with the plan, are consistent with the principles of the global settlement and result in very significant reductions to the amounts asserted.

Lastly, the plan proposes to allow LBHI's claims against the subsidiary debtors in an amount equal to eighty percent of those claims. This reduction only applies to LBHI's claims that are based on intercompany funding by LBHI and not

to claims based on derivatives or repos. The mechanism resolves potential extended litigation that could be brought to recharacterize LBHI's claims from debt to equity.

In response to the January 2nd amended plan, many creditors, including the ad hoc group, the non-con proponents and certain LBT noteholders, took opposing positions as to the debtors' proposed resolution. In order to achieve consensus and avoid cost and prejudicial delay of litigation and reach a rational economic resolution, the debtors intensified their efforts and called all the major stakeholders to the meetings that Mr. Miller described in June of 2011.

The meetings were robust. Negotiations proceeded in good faith and at arm's length. Over 125 individuals attended including principals, attorneys and financial advisors for many of the major stakeholders. In fact, we barely had a conference room that was big enough to fit everybody.

There were two formal sessions and countless hours of negotiations that followed to finalize the document and consensus was ultimately achieved. As a result of the June meetings, all of the parties agreed to adopt what was the settlement mechanisms proposed in the January plan and to support confirmation of the debtors' plan including the global settlement but subject to certain required adjustments. Each of these adjustments was painstakingly negotiated and is highly sensitive to changes. In that sense, the global settlement

must be viewed holistically.

There were seven major settlement mechanisms that were added to the debtors' plan in June in order to achieve the global settlement. Pursuant to one settlement mechanism, it was agreed that the first one hundred million dollars of distributions that LBHI receives from each of LCPI and LBSF will automatically be distributed to the third party unsecured creditors of those entities. In addition, the first seventy million that is recovered by LBSF on its assets in excess of 14,156,000,000 will be distributed only to unsecured creditors of LBSF. Effectively, LBHI and the other participating debtors who have claims against LBSF have agreed to waive their rights up to seventy million dollars of value from proceeds of assets, if any, above the debtors' projections of recoveries from LBSF in exchange for other benefits that they will receive from the global settlement.

Pursuant to another settlement mechanism, LBSF will have an allowed administrative expense claim against LBHI in the amount of 300 million dollars. This claim is in recognition of the fact that any settlement of a derivates contract, which in almost every case has a related guaranty claim, benefited not only LBSF but also LBHI. Up to now, the administrative expenses related to such settlements have been charged solely this LBSF; this mechanism apportions the administrative expenses appropriately.

The treatment and allowance of the claims of certain designated entities, the two Racers Trusts and Fenway, is another settlement mechanism to resolve disputes relating to the amount and allowance of those claims asserted by those designated entities along with the risks of substantive consolidation to those entities, the parties agreed to a single claim of the Racers Trust against LCPI in the amount of five billion, a deficiency claim of the Racers Trust against LBSF in the amount of 1.9 billion and a single claim of Racers Trust against LBHI in the amount of 1.9 billion. Fenway Trust has a claim against LCPI in the amount of 230 million. Importantly, each of these claims apply the plan adjustment.

The treatment of the intercompany claims of LBT and the guaranty claims of the LBT noteholders against LBHI was also a material part of the June settlement. The parties agreed that the intercompany claim of LBT against LBHI should be allowed in the amount, 34,548,000,000 on account of no proceeds loaned to LBHI and treated the same as all other direct intercompany claims of affiliates and allowed in its reconciled amount.

In addition, as part of the settlement, the parties agreed that the structured securities valuation methodologies proposed by the debtors will be applied to the structured security claims of the plan support creditors.

Lastly, as part of the settlement mechanisms, the

parties agreed to modify corporate governance provisions including, among other things, the appointment of the director selection committee comprised of nine individuals. One member was chosen by the debtors and the balance chose by various creditor groups and the selection of the directors of LBHI by that committee prior to confirmation. We filed a notice of those directors yesterday, Your Honor.

All of the described mechanisms form the basis of the global settlement and the foundation of the plan. The plan also contains standard provisions such as dealing with distributions, reserves, provisions for disputed claims, executory contracts, retention of jurisdiction and conditions to the effective date which currently, the debtors believe, will occur no earlier than January 31st.

As Mr. Miller mentioned, based upon the agreement to the global settlement, the plan is overwhelmingly supported by the debtors' economic stakeholders as evidenced by the plan support agreements, the large number of pleadings filed in support of the global settlement, in support of the plan and confirmation and the creditors' vote to accept the plan.

I don't think there's a need to go through the vote. Mr. Miller did that already.

As to each of the debtors, all of the requirements of Section 1129 have been satisfied including feasibility, good faith and best interest. Your Honor, I'm prepared to go

through in more detail regarding each of the provisions of Section 1129(a) and (b) of the Bankruptcy Code. However, given where we are, we're prepared to rely solely on the memorandum and declarations which Mr. Miller referenced earlier submitted in support of confirmation unless Your Honor has any specific questions.

THE COURT: I don't have any specific questions as to the declarations that I've read. And I accept those declarations as direct evidence in support of confirmation.

(Declaration of John K. Suckow in support of confirmation was hereby received into evidence as of this date.)

(Declaration of Daniel J. Ehrmann in support of confirmation was hereby received into evidence as of this date.)

(Declaration of Steven J. Cohn in support of confirmation was hereby received into evidence as of this date.)

(Declaration and supplemental declaration of Jane Sullivan on behalf of Epiq Bankruptcy Solutions, LLC, regarding voting and tabulation of ballots were hereby received into evidence as of this date.)

THE COURT: I do have a question as to how you propose to deal with the remaining objection of Dotson. And I don't know whether or not that objection is outstanding because of some inability in communicating with the client or because of a concerted view on the part of that creditor that it wishes to stand up and fight the tide.

MS. FIFE: Yeah. Your Honor, we have had numerous conversations with the attorney representing Dotson. And he's here in the courtroom today. Unfortunately, we were unable to reach a settlement with Dotson where, based on the record that we've put before the Court today, we're prepared to allow the attorney to go forward and make his case. Is that okay?

MR. MILLER: I would like to address that with Your Honor, if I may.

MS. FIFE: Oh. Okay. Actually, we also wanted to introduce into evidence the declarations.

MR. MILLER: He said they're admitted.

MS. FIFE: Oh, okay.

MR. MILLER: If Your Honor please, Harvey Miller again. As Ms. Fife indicated, Your Honor, it wasn't for lack of effort. The effort that was made over the period since the approval of the disclosure statement is outstanding.

In addition to the twenty formal objections that were filed, Your Honor, there were many threats of objections which were dissipated through these intensive negotiations. There were objections, Your Honor, based -- many objections, I should say, that were based upon assumption of executory contracts and cure amounts which have been deferred to a date, I believe, in February. And those really are not confirmation objections, Your Honor. So that's out of the picture.

Of the twenty formal objections, we are left with one

objection, Your Honor. And that is the objection of Dotson. And the Dotson objection, Your Honor, is based upon -- let me just find my notes, sir -- three basic points. There is no risk of substantive consolidation of LBSF -- I'm sorry -- that's the CDIB. But the global settlement and plan adjustment as to Dotson is unjustified and improper. The plan adjustment of twenty percent as applied to Dotson pursuant to the global settlement is unreasonable.

So the basic underlying objection here, Your Honor, is that there is absolutely no risk of substantive consolidation as it relates to the entities involved in the Dotson claims.

THE COURT: In that sense, it's an objection that's comparable to a number of other objections that were filed but withdrawn.

MR. MILLER: That's correct, Your Honor. And I might say, in connection with the Dotson claims, Your Honor, those claims relate to the purchase of preferred securities that were issued one in the case of Lehman Brothers UK Funding IV LP and one in the case of Lehman Brothers UK Capital Funding LP. The smaller claim of 237,000 dollars is already subject to objection. And the basis of the objection, Your Honor, is that this is not a creditors' claim but an equity claim based upon the preferred securities. A similar objection will be interposed to the larger claim, Your Honor.

So what we have, Your Honor, is an objection,

basically, to the global settlement, that the global settlement should not be approved because it essentially results in inequitable treatment of Dotson. And I think, in that context, Your Honor, we should bear in mind that bankruptcy courts are empowered to approve settlements if they are in the best interest of the estate. And a settlement need not be in the best possible outcome for the debtor but must not fall beneath the lowest point in the range of reasonableness as the court of appeals in this circuit has determined in Cosoff v. Rodman and in the Drexel case.

Compromises are a normal part of reorganization. As we have set forth in great detail in the memorandum of law that was filed in support of the compromise and settlement. So we have to look, Your Honor, at the factors that the Court should consider in relation to the approval of this global settlement which is the lynchpin to this plan. One is the probability of success. And what are we talking about, Your Honor? We're talking about a twenty percent risk that substantive consolidation might be directed by a bankruptcy court. That's not a very high threshold. And, Your Honor, we have filed, and Your Honor has taken as evidence of the debtors' affirmative case, the declaration of Mr. Suckow. And that declaration, Your Honor, is quite voluminous with the exhibits which takes about four inches. And Mr. Suckow's gone through, in detail, the facts -- and he tried to present to Your Honor a very

balanced view. Lehman operated, as has been stated in this court many, many times, as a single enterprise under the name Lehman Brothers.

The issuance of guaranties by Lehman in connection with transactions, particularly under ISDA contracts and derivatives, were dependent completely on the issuance of guaranties.

The entities -- the so-called legal entities, Lehman did not do business based upon legal entities but business lines.

By the same token, Mr. Suckow has pointed out, yes, electronically you could say there are books and records. There is no evidence that has been produced in this court or any place that absent the guaranties that were issued by the holding company that anybody would have done business with one of those thinly capitalized entities. Legal entities -- as a matter of fact, Your Honor, Lehman had 8,000 subsidiaries. They were not all active. And probably as of the date of the commencement of the case, it was less than 4,000 that had some function.

Risk was assigned centrally. Decisions were made centrally all as set forth, Your Honor, in Mr. Suckow's declaration and as supported by Mr. Cohn and Mr. Ehrmann.

So in terms of whether there is a twenty percent risk, Your Honor, in the legal world, I would have to say, Your

Honor, certitude on the part of somebody doesn't mean certainty. There is always a risk. Every time attorneys walk into a courtroom, there's a risk. I've lost a lot of cases I thought I should have won. And I've won a lot of cases I thought I should lose. So there's always the risk in litigation. And a twenty percent risk given the facts that are established through the declarations that we have put in in this case, Your Honor, is not a major obstacle. So we think -- we submit to Your Honor that the twenty percent risk is there.

The second factor, difficulties of collecting any litigated judgment, that's not really a factor in this situation. But if substantive consolidation was directed, there would be difficulties in corralling, if I can call it that, foreign entities who are subject to their own insolvency proceedings in different jurisdictions, not that it's insurmountable, at least in our opinion.

The complex -- number 3, the complexity and likely duration and expense and inconvenience and delay. The litigation that would erupt, Your Honor, if this plan is not confirmed, as demonstrated by the polar extremes of the ad hoc group's plan and the OpCo creditors' plan, and just reading the disclosure statements relating to those two competing plans demonstrates the extent of the issues and the time that would be devoted to litigating those issues -- as Your Honor may recall, an attempt was made when were in a competitive plan

situation for a protocol on discovery.

THE COURT: I think it was more than attempt. We actually had one.

MR. MILLER: It's relative in one's mind. In any event, Your Honor, it took four months to get to that document which you think we finally accomplished without a single day of discovery, Your Honor. No depositions were taken and we had exhausted four months. The request for documents were astounding, Your Honor. The burden that was put on the estate to create a data room.

So in that context, Your Honor, if we are going to litigate, if we have to litigate all these issues, one, it's going to be a long, long time; two, it's going to be very, very expensive. It's going to be multi-faceted, multi-party. I'll just use an example, Your Honor, without -- with all due respect, the litigation involving JPMorgan which has now been pending for over a year, I believe, and I don't know where the trial date is. It's probably moved back someplace into 2013 'cause I know my deposition isn't scheduled till next year.

It's just beyond dispute, Your Honor, that the complexity and duration and expense and inconvenience of litigation would be overwhelming. And what's that in effect, Your Honor? It delays distributions to creditors. And there is a time value to money. And as I said before, Your Honor, nobody thought on September 15, 2008, as Your Honor was waiting

for us to come down to court to anoint -- no. I shouldn't say that -- for you to start acting in the case -- we didn't get here till Tuesday -- nobody thought that this would be over in three plus years. In fact, we got a number of e-mails yesterday saying I don't believe it.

So --

THE COURT: Well, it's not over yet.

MR. MILLER: No. It's not over yet, Your Honor. And unfortunately, there is a post-effective date administration that will occur.

Number 4, Your Honor, the proportion of creditors who do not object to the settlement or who affirmatively support the proposed settlement versus the less than one million dollars in opposition to the settlement. There are twenty-nine pleadings, Your Honor, in support of the settlement. There are PSA -- plan support agreements by creditors holding more than 450 billion dollars in claims, Your Honor. Against that, we have the one objection that is less than one million dollars of two elements of a claim that are going to be -- that one is disputed and one will be disputed by the debtor as equity claims.

Factor number 5, Your Honor, the competence and experience of attorneys and other professionals who support the settlement. This was not a settlement, Your Honor, that was derived or formulated exclusively by the debtors. The

unsecured creditors' committee was an active, active participant in the development of these compromises and these settlements. And credit must be given, Your Honor, to the ad hoc group and Mr. Uzzi's participation in these negotiations as well as the OpCo creditors. The original meetings, everybody had to wear a flack jacket. That soon dissipated.

So the competence and experience of attorneys and other professionals who support the settlement is outstanding, Your Honor. Leading members of the bar and expert practitioners in this area.

Number 6, Your Honor: the benefits to be received by affected parties. This, again, Your Honor, is self evident. The recognition of guarantied claims, the reallocation, the plan adjustment resolves all of the issues which would lead to expensive and protracted litigation. So there are huge benefits. And there are benefits to Dotson. If Dotson is able to establish a creditors' claim, Dotson's claim is based on a guaranty. If there was sub-con, that guaranty would be eliminated. So there is a real benefit flowing to Dotson if it can establish it has a creditors' claim which is disputed.

Number 7, Your Honor: the extent to which this settlement is the product of arm's length bargaining and not the product of fraud or collusion. Well, again, Your Honor, that factor is self-evident. These were extensive negotiations. They were bitter at times. There was even

yelling at times. But eventually, rationality came to the forefront and these settlements were accomplished.

And the last factor, Your Honor: the debtors' informed judgment that the settlement is fair and reasonable. Your Honor, based upon the facts that have been established here through the declarations, it's clear the debtors' informed judgment is that the settlement is fair and reasonable and is recommended as part of the confirmation of the Chapter 11 plan.

In terms of substantive consolidation, Your Honor, the equitable doctrine permits a Court in a bankruptcy case involving one or more related corporate entities in appropriate circumstances to disregard separate identity of corporate entities and to consolidate and pool their assets and liabilities and treat them as though held and incurred by one entity.

The Drexel-Burnham case, Your Honor, which was in this district, is a comparative to the Lehman case. And in the debtors' memorandum of law, Your Honor, I think it's at page 15 and also cited in Mr. Suckow's declaration, we have side-by-side put the Drexel factors and how they apply to Lehman.

There is no contrary evidence, Your Honor. There is no evidence by the objector of any reliance upon the separate identities of any of the Lehman entities.

Consistent with the Drexel matrix, which is on pages 16 and 17 of the debtors' memorandum of law, a global

settlement based upon a twenty percent risk of substantive consolidation being directed is, as I said, not a high threshold. The nature of the Lehman enterprise and the entanglement of its affiliates which evidences a single enterprise accentuate the risk that there is at least a twenty percent risk in any litigation and litigation that would be expensive to conduct and, more importantly, delayed distributions to the holders of allowed claims.

The record reflects that few, if any, of the Lehman affiliates, other than LBHI and perhaps LBI, could stand on their own and access credit. The objector has not produced an iota of evidence that it relied upon the separate identity and creditor of any Lehman entity. Rather, it's clear from the claims that have been filed by Dotson that it did business with the Lehman entities because of the guaranties issued by LBHI.

The debtors have attempted to present a very evenly balanced presentation that demonstrates the risk of potential substantive consolidation and the factors that might support a denial of substantive consolidation. Due consideration has been given to the strengths and weaknesses of the issues.

In the context of all of that, Your Honor, this is a compromise and settlement. It does not require a mini trial. All that has to be held by Your Honor is that the proposed compromise and settlement does not fall below the lowest range of reasonableness. We submit to Your Honor that it does fall

way above the lowest range of reasonableness.

In addition, Your Honor, as part of the global settlement are the bilateral settlements which we have set forth at length in the submissions to the Court. We would submit also that each of those settlements -- and there are no objections to any of those settlements, Your Honor -- and the settlement with the LBIE administrators was a major step in the advancement of the progress of this case. Very, very difficult. Consumed an awful lot of time. But there's not one objection to any of the bilateral settlements. We don't think it's necessary, Your Honor, to burden the Court by going through each of those settlements. In light of that, there are no objections to those settlements.

THE COURT: There's no need to do that.

MR. MILLER: I beg your pardon.

THE COURT: There's no need to go through the bilateral settlements.

MR. MILLER: So, Your Honor, in the context of the declarations which represent the affirmative case of the debtors in support of confirmation of the Chapter 11 cases and acknowledging that the global settlement is the lynchpin to the plan of reorganization and the overwhelming acceptance of creditors that demonstrates that we must -- as I said before, we must have done something right in this case, we suggest -- don't suggest -- we ask Your Honor to confirm the Chapter 11

case and approve the global settlement. Thank you.

THE COURT: Fine. Now I have -- I'm about to make a brief statement. You can sit down.

MR. MILLER: You have my permission, Your Honor.

THE COURT: You can sit down if you'd like.

I've read everything that I could get my hands on relating to confirmation including various statements that have been made by parties in interest including the creditors' committee, the ad hoc committee, counsel for LBIE. I don't mean to leave anybody out that's important. But I read substantial briefs and statements in support of confirmation. This is, in effect, a time when parties who might wish to be heard in support of confirmation would have that opportunity. This is also a time when counsel for Dotson, the last objector standing, might reasonably explain why this objection is still being prosecuted and how counsel intends to proceed. If that objection is going to be diligently and ardently pressed, I'd like to know how that's going to happen. I think it's important for us to know that either before hearing from those who might wish to say a few words in support of the plan.

MR. MILLER: We agree, Your Honor.

THE COURT: So let me hear what counsel for Dotson wishes to say other than "I'm sorry".

MR. SULLIVAN: Your Honor, James Sullivan of Moses & Singer, counsel for Dotson Investment Ltd.

THE COURT: You're in a very tough spot, Mr. Sullivan. You know that.

MR. SULLIVAN: Pardon?

THE COURT: I said you're in a very tough spot.

MR. SULLIVAN: I understand that, Your Honor. I just wanted to respond to your question that you posed. I know we kind of got a little bit far afield of it when we started to get into arguments regarding the settlement. But you had asked about the discussions between Dotson and the debtor. We are amenable to a compromise but thus far have not received any offer from the debtors. So if --

THE COURT: Is this about horse trading or is this about a legitimate concern that the compromise reflected in the global settlement is not fair and appropriate under all the circumstances?

MR. SULLIVAN: Your Honor, I think we have a very sound objection. You know, I stand here alone, Your Honor. But I've heard from many other creditors who are not here before you today, many of them smaller creditors without the financial incentive to come up here and try to stand in front of a train that looks like it's coming down the tracks right at us. So I commend the debtors for resolving an unbelievable number of objections. And I have no qualm that they really did an inordinately good job in trying to resolve all these claims and objections. But I didn't want the record to reflect that

the creditor that I represent is being obstinate or unreasonable in an effort to kind of blackmail the debtors into getting something to which it's not entitled. As far as --

THE COURT: You absolutely have the right to present your objection and to prosecute it fully. My question to you is how you intend to do that.

MR. SULLIVAN: Your Honor, the way I see it, there are primarily two issues that our objection gets to. The first one debtors' counsel addressed to a large degree. And that's the settlement as it pertains to the twenty percent give-up by certain creditors in favor of other creditors.

The second issue that I'll be addressing today is the best interest of creditors test. For similar reasons, I don't believe that the debtors will be able to satisfy that test because the way that their liquidation analysis is performed, it continues to use classes as if the Chapter 7 trustee would basically adopt the plan that the debtors are proposing here today. And therefore, similarly situated creditors are not receiving similar treatment. So if you were to go through the liquidation analysis, you would see that a general unsecured creditor would be receiving a different distribution than other general unsecured represented in other classes. So there's a defect in the liquidation analysis. And if you were to take away some of the assumptions set forth in that analysis, I think Your Honor would surely come to the conclusion that

Dotson is not better off in this Chapter 11 pursuant to this plan as opposed to a Chapter 7 where it's not going to be subjected to, among other things, a twenty percent give-up in favor of other creditor classes.

THE COURT: Now I ask you whether or not your objection is going to be based purely on legal argument or whether or not you intend to either offer evidence or cross-examine any of the witnesses whose declarations I've already accepted.

MR. SULLIVAN: I would intend to cross-examine two witnesses, Your Honor. I believe the -- I think it was Mr. -- I'm not sure how to pronounce it -- Suckow who I believe was the witness predominantly responsible for giving testimony with respect to the nature of the settlement and the reasonableness of the settlement. And the second witness would be the debtors' witness who would propose to support the assumptions underlying the liquidation analysis and the end result of that analysis.

THE COURT: Is there anything more at this time?

MR. SULLIVAN: No, Your Honor. And that would just be followed by argument.

THE COURT: All right. I think this would be a reasonable time to hear from those who have been active in the plan process who may wish to say a few words or they can simply rely on their papers. It's up to them.

MR. DUNNE: Thank you, Your Honor. Good morning. For the record, it's Dennis Dunne of Milbank, Tweed, Hadley & McCloy on behalf of the official committee of unsecured creditors. For the most part, we will rely on our pleadings but I'll say a few brief words.

Let me start with one reflection on the path to confirmation. As I was saying to Mr. Miller recently, who would have thought three and a quarter years ago that when we would begin the confirmation hearing, we'd have near universal support among the creditors for our plan. These cases, as Your Honor no doubt vividly recalls, began amidst chaos, uncertainty, personal anguish and rapidly declining asset values. The first few months of the case were frenetic and fixated almost exclusively on selling assets that were in the process of vanishing completely and stabilizing other properties for future disposition or monetization after values had rebounded.

When the dust finally settled after several large asset sales, the committee and the debtors encountered a cacophony of divergent and competing creditor voices all of whom were equally convinced that their view of the facts and the law as applied to the Lehman universe was the one on a sellable truth. They had diametrically opposed views on substantive consolidation, recharacterization of intercompany claims, the validity of guaranties and other critical elements

of the plan. Given that each of these issues drove values and recoveries to one group of creditors at the expense of another group, we originally thought that it was likely that a plan that satisfied all key constituents would be unattainable in these cases. More probable, there would be some group or another that would decide that a litigated outcome would exceed a settled one.

Against these long odds, the debtors and the committee succeeded in crafting a plan that garnered near universal buy-in from creditors. It proves what I believe is the wisdom and propriety of the plan settlements. They were calibrated to precisely reflect litigation probabilities. If those calibrations were incorrectly said, one large group or another would have failed to settle but would have instead viewed the plan as having passed over the inflection point where litigated outcomes would have been preferred.

The debtors, the committee and the other ad hoc groups in the case took extreme pains to get it right and we did. As a result, we are in a place, Your Honor, where we never thought we'd be: standing before the Court seeking to confirm a plan that faces minimal creditor opposition.

I will spend just a couple minutes giving the Court the benefit of the committee's perspective on the plan. As Your Honor knows well, the committee has been involved in every aspect of the Chapter 11 cases since its formation. The

committee's professionals have worked closely with the estates and the management and wind down of each of the debtors' discreet asset classes. As we explained to the Court in our written submission and as we discussed during the disclosure statement hearing, the committee developed its own legal theories and strategies regarding a wide array of matters including appropriate allocation of value, distributable under the plan to various classes of creditors. The committee has reviewed and analyzed the key issues in these cases including substantive consolidation, intercompany claim recharacterization and the enforceability of various guaranties. As a result of these independent analyses, the committee, as a fiduciary, brought to bear on the plan process a comprehensive knowledge of each debtor's assets and claims pool as well as a global perspective on the key value drivers

From the very beginning, Your Honor, the centerpiece of our proposed plan construct was a global settlement of all the plan issues. As the Court is aware, the global settlement concept was included in all the iterations of the Chapter 11 plan and it became a pillar of the plan.

Let me speak quickly about the one pending objection. Dotson objects to the plan on the ground that it fails to satisfy the standards of Section 1123(b)(3) and Bankruptcy Rule 9019. As explained by Mr. Miller and Ms. Fife, a Chapter 11 plan may include a settlement or adjustment of any claim which

the Court must evaluate under the appropriate approval standard as set forth in Bankruptcy Rule 9019. The Court must find that the settlement is fair and equitable and in the best interest of the estate. A settlement should be approved so long as it does not fall below the lowest point in the range of reasonableness.

These plan settlements are the most critical component of the plan. They represent a negotiated resolution of the various plan issues and have garnered the support of creditors asserting over 450 billion dollars in claims as well as several fiduciaries appointed in the foreign insolvency proceedings of eighty-seven affiliates. Such resolution benefits all the debtors' creditors by avoiding prolonged and costly litigation.

The complexity of the controversy surrounding the issue of substantive consolidation is evidenced by the competing plans of reorganization filed by the two ad hoc groups. These plans were based on diametrically opposed views as to the propriety of substantive consolidation. And they demonstrated, among other things, that colorable arguments existed on both sides of the dispute

Mr. Miller and the debtors' submissions, including the affidavit, have already addressed the Augie/Restivo factors at length so I will not belabor the point. But I will emphasize that at the outset of the Chapter 11 case, the committee directed its legal and financial advisors to determine whether

sub-con of all or some of the debtors or substantive consolidation of the debtors with some or all of the affiliates was warranted and, if so, whether it would be an appropriate result for the debtors' unsecured creditors.

In undertaking the analysis, the committee's advisors investigated all aspects of the debtors' pre-petition businesses relevant to the substantive consolidation inquiry including information developed by the committee's financial advisors, document discovery received from various sources, public information available prior to the commencement of the Chapter 11 cases, interviews with creditors and information received from the debtor and from the examiner. In the end, the committee recognized that (1)the cost of litigation to resolve substantive consolidation would be substantial; (2)such litigation would not provide any assurance of the outcome deemed most favorable by the committee; and (3)a resolution of such litigation might require several levels of appellate review thereby postponing any prospect of an expeditious distribution to the debtors' creditors of estate assets.

The committee concluded that an economic settlement that bridged the gap between substantive consolidation and a deconsolidated plan would be in the best interest of the debtors' creditors.

We believe that this compromise is both consistent with our substantive consolidation analysis and the settlement

approval standard articulated by Second Circuit and that the plan settlements are fair and equitable and should be approved by the Court today.

So, Your Honor, the plan is a remarkable accomplishment by all the parties involved. The fact that no voting class has opposed the plan is a testament to the carefully calibrated settlements embodied in the plan. As importantly, it avoids years of litigation and allows distributions to creditors to commence early next year. We ask the Court to approve the plan and enter an order substantially in the form filed by the debtors. Thank you, Your Honor.

THE COURT: Thank you.

MR. UZZI: Good morning, Your Honor. Gerard Uzzi on behalf of the ad hoc group. Your Honor, I actually wasn't planning on rising today.

THE COURT: That's okay.

MR. UZZI: But I thought there was just a few comments I could make to that that were helpful to the specifics that are before the Court today.

THE COURT: All right. Thank you.

MR. UZZI: But before I do so, and to not rise again later, I just must take this opportunity to thank the Court for the opportunity that you've given us throughout these cases to be heard throughout the cases and for your patience and for your stewardness in this case.

I must also take this opportunity, Your Honor, to thank really all the other professionals in the case in the way that they've interacted with us, but, in particular, I really have to thank and commend both Weil Gotshal and A&M for the way they ran this case. I do think -- we said it in our papers. I'll say it now and I'll say it again in the future. It is truly a remarkable result today, certainly not one that I would have predicted even as little as about six months ago. So, really, my hats off to them and I think they deserve many more accolades going forward.

With respect to the issue here -- I'd just like to make a couple of brief points. And I certainly believe no matter how small a creditor is that they deserve their day in court. So I don't mean to pick on the objector here today. But we've heard the use of about a million dollar claim. Nobody's going to get par recovery in this case. At best, maybe we're talking about twenty percent. So recoveries would be at the LBHI level about 200,000 dollars. And then we're hearing complaints about a twenty percent payover on 200,000 dollars. So very rough math, we're talking about 40,000 dollars in issue today. Just to frame this for the Court.

Now I'm particularly surprised, Your Honor, having been the champion of, I think, the LBHI interest -- and I can assure you we spent much more than 40,000 dollars pursuing and protecting those interests -- that an LBHI creditor, whether

it be a guaranty creditor or any other creditor is standing up here complaining about this settlement on the grounds that there's no basis for substantive consolidation 'cause you need to think about what the alternative is. And throughout these cases, Your Honor, I know we've been phrased as the substantive consolidation plan proponents, the substantive consolidation champions. We have tried to step away from the use of the word "substantive consolidation" because in many of our papers, we said we think it oversimplifies the issues. It's a bookend. We have sub-con on one end; we have non-con on the other end. And we have countless, infinite probably, permutations in the middle.

So what were the non-con plan proponents advocating? They were advocating for the separate treatment of LBHI. And all of the debtors. But what does that really mean? We need to think about that. Well, the other thing they were advocating for -- or if you look at the recovery analysis -- you'll look at LBHI's recovery analysis, you'll see over half of the assets, the actual assets that LBHI receives are recoveries on intercompany claims. Well, naturally, one of the things the non-con plan proponents were going to argue was for the disallowance of LBHI's claims against the affiliates.

So had we not had the settlement, an important part of the settlement was a recognition or a compromise on those intercompany claim issues. In fact, that was, for us, the

settlement. And so, what we have here is a recognition, a realization, of twenty-five billion dollars worth of distributable value on behalf of the LBHI that the objector wants to put in his pocket and say, well, I have that already and then complain about giving up 40,000 dollars.

So, you know, I just urge the Court in considering the fairness of the settlement that -- and we've heard the term "holistic" and -- the settlement maybe isn't pretty in its machinations. But it's not just about substantive consolidation. This creditor, I can assure you, would do much worse -- and I don't think they've done the analysis. I don't think they've run the math. They would do much worse under what is the alternative outcome which, if we litigated, we don't think would come to fruition. But I think just the cost of getting there, and I know what my litigation budget was to get there, would dilute his recoveries by more than 40,000 dollars, Your Honor.

That's all I have. If you have any questions for us, Your Honor, obviously, we're happy to answer them. And again, thank you, Your Honor.

THE COURT: Some day I'll ask you what your litigation budget was.

MR. UZZI: Fair enough, Your Honor.

THE COURT: Okay. I think we're going to hear from LBIE's counsel. Good morning.

MR. HUEBNER: Good morning, Your Honor. For the record, I am Marshall Huebner of Davis Polk & Wardwell on behalf of LBIE. Your Honor, I'm not going to engage in thanks or congratulations because this is a contested hearing and there is an objector. So I want to speak very briefly to the objector and in support of confirmation.

Your Honor, with all due respect, I think Dotson has a lot of nerve to file a seven-page objection, to take no discovery, to present no evidence and to not proceed in any way except to stand up for the first time at a confirmation hearing I think speaks volumes about the nature of what is really going on here. As Your Honor may remember, LBIE was not yet settled at the disclosure statement hearing. And we were prepared to proceed having blocked out two weeks of trial time because that's actually what one probably should have done if one believed that the settlement needed to be proven as inappropriate.

THE COURT: I actually have that time. So we're all set as a result of what you would do on your disclosure statement.

MR. HUEBNER: Well, it would be the most interesting cost benefit ratio for a 27,000 dollar possible benefit against about twenty-seven million dollars of professional fees.

But, Your Honor, let me be very clear because the world is much as Mr. Miller described it but actually even

better because what we hope the Court does not do, 'cause I don't think you have to do, is find that there is a twenty percent risk of substantive consolidation. That's not the test at all. You only need to find that the twenty percent settlement is somewhere within the range of reasonableness of some risk of substantive consolidation. And obviously, as a foreign affiliate, possibly among the largest, we have strong views on the risk and probabilities of the various sub-cons. But you don't have to find any of that. You just have to find that twenty percent is somewhere in the range of reasonableness.

And, Your Honor, the legal objection -- I think the best interest argument is going to be a very interesting one for counsel to Dotson to make because when you read their seven-page pleading -- and to be fair to them, I'm counting the signature block and the captions and all those things -- what you actually see is sort of nothing until the end. They describe the nature of their claims and then they say the debtors have presented no evidence of any of the factors of sub-con. And they say that in a generic way with no reference to any of the pleadings. And they cite a bunch of cases with generic parentheticals. That is not a true statement. And Your Honor knows that probably better than anyone because you have read all the declarations, the evidence that is admitted and uncontradicted that, in fact, goes to those factors. So

I'm not really sure how, in a clean conscience, they can sort of say there's nothing here, Your Honor, to support the settlement.

And then there is the legal theory that we heard this morning which is really what they intend to explore today is a best interest of creditors, you know, the argument that in a liquidation, they would not suffer sub-con and thus would do better. It's a very intellectually important and interesting argument. But here's something that I think is worth thinking about for context.

When you read their objection, the 1129(a)(7) argument doesn't appear until the very end when they have an (a) through (h) where they just list flat out sort of every legal theory they could think of. There isn't even case law or argumentation that I could find -- and I'm going to apologize in advance. I read it rather quickly on a colleague's iPad here in the courtroom. I don't think they even sort of made their prima facie case except for tossing it in as one of the theories.

So when you think about what it is that they have to prove this morning, they have to essentially prove that they will do better in a liquidation. That, in essence, means proving that there is zero risk of substantive consolidation and that they're entitled to, essentially, judicial notice that in a liquidation analysis it must be assumed that the debtors

are inherently separate.

This is philosophically circular because exactly what the settlement is designed to avoid is a full-scale blown-out trial on the issue of what the risks of sub-con actually are. And so, humbly, I would suggest that once you accept the legal conclusion, as I think the Second Circuit has made very clear, that a settlement is designed to avoid a mini trial on the merits. It's designed to provide for only a canvassing of the issues. These you have to sort of take as a given unless I think you surprised a rather great number of participants that there is at least some risk of sub-con. And once you decide that there is at least some risk of sub-con, that some risk has to be analogously applied to the best interest analysis and they sort of lose as a matter of law.

So, again, it's not really my case other than to say that we probably -- LBIE and its affiliates with twenty-six billion dollars of reserved agreed gross claims against the debtors had rather more than 878,000 dollars at stake and had a rather strong impassionate view on the impropriety of sub-con including of the foreign affiliates where, obviously, we stood to lose a great deal. Which is why we both urge you not to make any specific findings about the probability of sub-con because there are lots of other states still ticking along but merely to find exactly what the debtors have asked you which is that twenty percent is a reasonable settlement. And speaking

for the tens of billions of dollars on our end that we're in a similar situation, we think that confirmation should be approved. Thank you.

THE COURT: Thank you. Are there any other parties who wish to be heard in support of confirmation or in reference to the global settlement or any other issue that we've been discussing? All right. Mr. Miller?

MR. MILLER: Your Honor, if I might, I would like to reply to Mr. Sullivan. As Mr. Huebner has pointed out, Your Honor, if you look at the objection interposed on behalf of Dotson, at paragraph 12, it says, "Consistent with the foregoing", which is the objection to the sub-con risk, "the creditors" -- and at that time, it was CDIB and Dotson -- "reserve their right to supplement the objection and to argue any of the following at the confirmation hearing." One, Your Honor, they never supplemented the objection. So, as Mr. Huebner described, this is like a laundry list of possible objections. And as he pointed out, the objection in subparagraph 12(d), the plan's liquidation recovery analysis does not sufficiently demonstrate that dissenting creditors such as the Creditors would receive at least as much under the Plan as under a Chapter 7 liquidation, in violation of §1129(a)(7)."

When Mr. Sullivan stood here and responded to Your Honor's question about how he was going to present his case,

the thrust of his argument was that the liquidation analysis and the declaration by Mr. Cohn in support of the analysis of the treatment of the claims is questionable because it assumes that the same settlement would be made by a Chapter 7 trustee.

Now, Your Honor, I believe that that is a question of law. And we have cited in our memorandum, and it is the law in this circuit, as stated in a number of cases include Adelphia Communications Corp. and in the Enron case and in the Capmark Financial Group case, a Delaware case, that considering -- the essence of all of these cases, Your Honor, stand for the proposition that in doing the 1129(a)(7) test, the assumption is proper and appropriate that the Chapter 7 trustee would make the same settlements as contemplated in the Chapter 11 plan because what you're comparing is the Chapter 11 plan versus a Chapter 7 liquidation.

So if that's the argument of Dotson, Your Honor, as a matter of law, he has to lose. And there really isn't any need for cross-examination of Mr. Cohn if Your Honor rules that that is the law. And if that's the only thing he's talking about, is taking out the assumptions that go into the liquidation analysis, he has not got any legal basis to do that, Your Honor.

THE COURT: Okay. I think this may be a suitable time for us to take a break. And I'm going to suggest a ten minute break. And beyond suggesting a break, I'm going to suggest

that Mr. Sullivan think hard about what he's in the midst of doing given the legal arguments that have been made not only by Mr. Miller but by counsel for LBIE concerning the position that he is articulating and the arguments that have been made by counsel for the ad hoc committee and by counsel for the creditors' committee.

He represents a creditor that is clearly entitled to press objections and will have time to do that should he choose to proceed. But it's also true that the objection was filed jointly with another client of Moses & Singer, China Development Industrial Bank, and that client which had joined in the very same objection, withdrew the objection. I don't think it's a proper use of the confirmation hearing to, in effect, use an objection as a means of coercion to try to obtain a deal. And that's one of the interpretations to be drawn from Mr. Sullivan's earlier comments that he was, in effect, trying to make a deal for his client. I think that the value of that deal probably has gone down rather than up as a result of standing in front of a tank. And I have this image of Tiananmen Square except I don't see this as a principal in command standing in front of the tank. I see this as someone who is simply doing his best for his client. But there are bigger issues before the Court than that.

So let's use the break for a couple of reasons. One, we all need it. Two, I think it makes sense for Mr. Sullivan

to think carefully about how he wishes to proceed so that we can do this as efficiently as we can do it. And, three, it might be worth having a conversation with other parties who have been particularly active in the case to see if this matter can be resolved. We'll take a ten minute break.

(Recess from 11:26 a.m. until 12:09 p.m.)

THE COURT: Be seated, please. Where do we stand at this point?

MS. FIFE: Your Honor, Lori Fife on behalf of the debtors again. I'm pleased to report that during the break, we had an opportunity to meet with Mr. Sullivan on behalf of Dotson. And he has agreed to withdraw his objection based on the following deal:

The debtors have agreed to meet with Mr. Sullivan and his client, if he chooses, within sixty days from the entry of the confirmation order if the order is entered to discuss his client's claim. We have made it clear to Mr. Sullivan that it is the debtors' position that that claim is not an allowable claim but we will, in fact, meet with him. We will provide documents to him. And he's able to articulate any grounds for the allowance of that claim. And with that, I believe, Mr. Sullivan is willing to withdraw the objection, Your Honor.

THE COURT: Mr. Sullivan, can you confirm?

MR. SULLIVAN: That's correct, Your Honor. This is James Sullivan. That's correct.

THE COURT: Okay. So with that, we now have a fully consensual case which is really quite extraordinary.

MR. MILLER: I just rise, Your Honor, because there's one commitment. One of the objectors was the city of Coppell in Texas. And as part of the withdrawal of that objection, we agreed to make a statement on the record, if I might, Your Honor.

THE COURT: Go right ahead.

MR. MILLER: The statement is: "All secured claims are entitled to interest to the extent permitted under Section 506 of the Bankruptcy Code to the extent of the value of the collateral securing the claim and tax liens are retained until the claims have been paid or the collateral is surrendered. In each case, the debtors retain the right to object to or dispute the asserted claim and validity of the lien on any basis." That's the statement.

I would also point out, Your Honor, we are going to make one minor change to the proposed order to accommodate the United States trustee.

And there are two stipulations that have been filed, Your Honor. On the agenda, items 63 and 64, notice of presentment of stipulation and agreement by and among Fannie Mae, Freddie Mac and the debtors regarding the third amended plan. And number 64, notice of stipulation among debtors and Fidelity National Title Insurance Company resolving disputes in

connection with plan.

With that, Your Honor, the debtors' case -- we rest.

THE COURT: Is there anything that any other party has to present? Well, I did reserve two weeks on my calendar for this. And I'm not sure how I'm going to use the next two weeks.

In anticipation of today's hearing and as I was watching the electronic docket and noting that a number of objections that I had been reviewing were falling by the wayside, and that this was becoming a remarkably consensual confirmation hearing and, with the withdrawal of the Dotson objection moments ago, now a completely consensual confirmation hearing, I jotted down some thoughts that I wanted to express. And I'm going to read them into the record because I gave these words enough thought that I might as well follow the script that I made for myself.

My world changed when the Lehman cases were assigned to me and so did yours. For me, it has been a once in a lifetime experience. To have worked across the bench from so many outstanding professionals in promoting conflict resolution and helping to bring these truly extraordinary one-of-a-kind cases to this culminating substantive moment, superlatives abound. And we have heard them all and probably used them all. This is the biggest, the most incredibly complex, the most impossibly challenging international bankruptcy that ever was.

But the greatest superlative of all is reserved for today. This largest ever unplanned bankruptcy that started in chaos, accelerated the financial crisis and eroded confidence in the global financial system also has yielded the most overwhelming outpouring of creditor consensus in the history of insolvency law. What a difference three years can make.

Never before have divergent holders of 450 billion dollars in claims recognized the benefits of pragmatic compromise and come together as one in support of a single Chapter 11 plan. This is a monumental achievement in our field, awe-inspiring, really, that, to me, represents the highest and best use of Chapter 11 in the public interest.

For myself, I'm extremely proud to have presided over this transparent, fair and the remarkably successful process that stands out as perhaps the finest example of the flexibility, power and utility of the United States bankruptcy system.

Our system is not perfect. But together we have shown the world that it can work very well indeed. Lehman may once have been a too-big-to-fail systemically significant global financial institution. But it was not too big to resolve in Chapter 11. I congratulate each and every professional in every single law firm and advisory firm here and in foreign jurisdictions that contributed in ways recognized and unrecognized, large and small, to this historic confirmation of

Lehman's plan. You should all feel great pride in what has been accomplished.

And I wish each of you a happy and healthy holiday season. Those who have worked so hard deserve a break. All objections to confirmation that have not been withdrawn are overruled. The plan is confirmed and an appropriate order will be entered. And we're adjourned in time for lunch.

(Applause)

(Whereupon these proceedings were concluded at 12:17 p.m.)

I N D E X

E X H I B I T S

NO.	DESCRIPTION	ID.	EVID.
---	Declaration of John K. Suckow in support of confirmation		34
---	Declaration of Daniel J. Ehrmann in support of confirmation		34
---	Declaration of Steven J. Cohn in support of confirmation		34
---	Declaration and supplemental declaration of Jane Sullivan on behalf of Epiq Bankruptcy Solutions, LLC, regarding voting and tabulation of ballots		34

R U L I N G S

DESCRIPTION	PAGE	LINE
Modified third amended joint Chapter 11 plan of reorganization of Lehman Brothers Holdings Inc. and its affiliated debtors confirmed	70	6

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
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Date: December 6, 2011